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AMENDED IN ASSEMBLY FEBRUARY 10, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 33

Introduced by Assembly Member Nava

December 1, 2008

An act to amend Sections 11302 and 11310 of, and to amend, repeal, and add Sections 10000, 10050, 11301, and 11313 of, the Business and Professions Code, to amend, repeal, and add Sections 25005 and 31004 of the Corporations Code, to amend Sections 4970 and 23001 of, to amend and repeal Section 252 of, to amend, repeal, and add Sections 112, 210, 4805.055, 5104, 5106, 12003, 14003, 17002, 18002, 18002.5, 22005, 30002, 31055, and 33045.5 of, to add Sections 23002 and 50003.5 to, and to add Division 0.5 (commencing with Section 25) *and Division 20.5 (commencing with Section 55000)* to, the Financial Code, *and to amend Section 11552 of*, and to amend, repeal, and add Sections 13975 and 13978.6 of, the Government Code, relating to financial services, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 33, as amended, Nava. Financial services.

Existing law establishes the Department of Financial Institutions, the Department of Corporations, the Department of Real Estate, and the Office of Real Estate Appraisers in the Business, Transportation and Housing Agency.

Existing law provides for the licensing and regulation of, among others, banks, credit unions, and other financial institutions by the Commissioner of Financial Institutions. Existing law provides for the licensing and regulation of, among others, residential mortgage lenders and finance lenders by the Commissioner of Corporations. Existing law provides for the licensing and regulation of, among others, real estate brokers and salespersons by the Real Estate Commissioner. Existing law provides for the licensure and regulation of real estate appraisers by the Director of the Office of Real Estate Appraisers. Existing law provides for the Real Estate Fund, a continuously appropriated fund, for purposes of providing funding for the regulation and enforcement of the Real Estate Law.

This bill would do the following, effective July 1, 2011: (1) establish a new Department of Financial Services (DFS) in the Business, Transportation and Housing Agency (BTHA), (2) designate the chief officer of DFS as the Commissioner of Financial Services, (3) transfer the powers, duties, purposes, jurisdiction, responsibilities, and functions of the Department of Corporations (DOC) and Department of Financial Institutions (DFI) to 2 new divisions under the DFS, the Division of Corporations and the Division of Financial Institutions, (4) designate the Commissioner of Corporations and the Commissioner of Financial Institutions as the directors of the Division of Corporations and the Division of Financial Institutions, respectively, (5) establish a new Office of Financial and Real Estate Consumer Advocacy within the DFS, and (6) transfer authority over real estate appraisers to the Department of Real Estate (DRE) under the Real Estate Law.

This bill would, effective July 1, 2012, transfer from the DRE to the Division of Corporations the authority to license ~~and, regulate, enforce, and discipline~~ real estate licensees ~~that provide lending, mortgage brokerage services, and business opportunity activities, as specified. engaged in residential real estate financial services, as specified. The bill would, by July 1, 2011, require the Commissioner of Financial Services to, among other things, adopt or amend regulations and rules~~

to implement this transfer. The bill would establish the Real Estate Financial Services Fund and the Real Estate Financial Services Recovery Account within the fund, both with continuously appropriated funds, and would direct that a specified percentage of licensure fees paid by those licensees engaging in residential real estate financial services be deposited in the recovery account. The bill would authorize an aggrieved person with a final judgment against a licensee to file an application, that includes a statement under penalty of perjury, with the Division of Corporations for payment from the recovery account. The bill would make these provisions relating to the fund and the account operative on July 1, 2012. By creating a continuously appropriated fund and account, the bill would make an appropriation. By expanding the crime of perjury, the bill would impose a state-mandated local program.

In order to implement the above provisions, this bill would require the Secretary of the BTHA, in consultation with DFI, DOC, DRE, and the Office of Real Estate Appraisers, to, on or before January 1, 2011, report to the Legislature and make specified recommendations regarding the consolidation of these entities and their respective operations. This bill would appropriate \$150,000 from the General Fund portions of the Real Estate Fund to the Secretary of the BTHA to fund the reports, thereby making an appropriation. The bill would make findings and declarations in this regard, and would make technical and conforming changes to related provisions and definitions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The regulation and oversight of financial services in
- 4 California is principally divided between two regulators, the

1 Department of Financial Institutions and the Department of
2 Corporations.

3 (b) California is one of only a few states that separate the
4 regulation of financial services among different licensing agencies.
5 California is also anomalous in that three state departments regulate
6 and oversee mortgage brokerage as well as the sale of specified
7 business opportunity activities.

8 (c) This division of oversight is most apparent in the regulation
9 of home mortgage lending that is split among multiple licensing
10 schemes, including the California Finance Lenders Law, the
11 California Residential Mortgage Lending Act, the Real Estate Law,
12 and laws governing the operation of state and federally chartered
13 banks or credit unions. This division of oversight has made it
14 cumbersome and expensive for California to consistently
15 implement, across three departments, major advancements in
16 consumer protection such as the federal guidance on nontraditional
17 mortgage product risks and statement on subprime mortgage
18 lending, the ~~SAFE~~ S.A.F.E. Mortgage Licensing Act of 2008
19 (*Public Law 110-289*) and, most recently, the California
20 Foreclosure Prevention Act.

21 (d) The Department of Real Estate and the Office of Real Estate
22 Appraisers protect consumers in real estate transactions by
23 licensing real estate agents and appraisers, respectively.

24 (e) This partition of regulation dilutes consumer protection and
25 creates confusion and unnecessary administrative difficulties for
26 financial services entities.

27 (f) The current regulatory system creates licensing arbitrage,
28 with entities seeking out licenses from various regulators in order
29 to obtain an advantage.

30 (g) It is in the public's best interest effective July 1, 2011, to
31 have a single regulator, the Commissioner of a new Department
32 of Financial Services, ultimately responsible for the regulation of
33 financial services in California previously spread among the
34 Department of Corporations to be transferred intact to the new
35 Department of Financial Services as the Division of Corporations,
36 the Department of Financial Institutions to be transferred intact to
37 the new Department of Financial Services as the Division of
38 ~~Financial Institutions, and the Department Real Estate, which shall~~
39 ~~remain as a separate department, but which, effective July 1, 2012,~~
40 ~~shall transfer its regulation of financial services with the same~~

level of consumer protections to the new Division of Corporations within the Department of Financial Services as set forth in subdivision (d) of Section 25 of Division 0.5 of the Financial Code. It is in the public's best interest to combine the other operations Financial Institutions.

(h) It is in the public's best interest that the Department of Real Estate remain as a separate department regulating real estate transactions, subdivided lands, and business opportunity activities. However, effective July 1, 2012, the Department of Real Estate shall transfer its licensure, regulation, enforcement, and discipline of those persons engaged in real estate financial services to the new Division of Corporations within the Department of Financial Services as set forth in subdivision (b) of Section 25 of Division 0.5 of the Financial Code. This transfer shall maintain existing consumer protections, including the availability of a recovery fund similar to the Recovery Account of the Real Estate Fund.

(i) It is in the public's best interest to combine the remaining operations.

of the Department of Real Estate and the Office of Real Estate Appraisers while remaining compliant with federal provisions related to the regulation of real estate appraisers.

(h) (j) It is in the public's best interest at this time to not expand or contract diminish existing authorities of the existing departments, commissioners, or directors upon transfer and renaming except as set forth in subdivision (d) (b) of Section 25 of Division 0.5 of the Financial Code. It is in the public's best interest at this time to not expand or contract diminish any existing duties, including fiduciary duties, of their licensees. It is, however, in the public's best interest to have the outgoing administration of their licensees or to diminish consumer protection.

(k) It is in the public's best interest to collect public comment and make recommendations on a series of potential future changes for later consideration by the Legislature; and regulators as set forth in Sections 48 to 50, inclusive, of Division 0.5 of the Financial Code.

(i) (l) It is in the public's best interest to create a formal Office of Financial and Real Estate Consumer Advocacy to advise the Commissioner of Financial Services and the Real Estate

1 Commissioner on how their departments can provide a high degree
2 of service and protection to the public, ~~and to be responsible for~~
3 ~~outreach to financial real estate consumers, and other duties~~
4 ~~described in Division 0.5 (commencing with Section 25) of the~~
5 ~~Financial Code.~~

6 SEC. 2. Section 10000 of the Business and Professions Code
7 is amended to read:

8 10000. This part may be cited as the Real Estate Law.

9 This section shall become inoperative on July 1, 2011, and, as
10 of January 1, 2012, is repealed, unless a later enacted statute, that
11 becomes operative on or before January 1, 2012, deletes or extends
12 the dates on which it becomes inoperative and is repealed.

13 SEC. 3. Section 10000 is added to the Business and Professions
14 Code, to read:

15 10000. (a) This part and Part 3 (commencing with Section
16 11300) may be cited as the Real Estate Law.

17 (b) This section shall become operative on July 1, 2011.

18 SEC. 4. Section 10050 of the Business and Professions Code
19 is amended to read:

20 10050. There is in the Business and Transportation Agency a
21 Department of Real Estate, the chief officer of which department
22 is named the Real Estate Commissioner.

23 It shall be the principal responsibility of the commissioner to
24 enforce all laws in this part (commencing with Section 10000) and
25 Chapter 1 (commencing with Section 11000) of Part 2 of this
26 division in a manner which achieves the maximum protection for
27 the purchasers of real property and those persons dealing with real
28 estate licensees.

29 This section shall become inoperative on July 1, 2011, and, as
30 of January 1, 2012, is repealed, unless a later enacted statute, that
31 becomes operative on or before January 1, 2012, deletes or extends
32 the dates on which it becomes inoperative and is repealed.

33 SEC. 5. Section 10050 is added to the Business and Professions
34 Code, to read:

35 10050. (a) There is in the Business and Transportation Agency
36 a Department of Real Estate, the chief officer of which department
37 is named the Real Estate Commissioner.

38 (b) It shall be the principal responsibility of the commissioner
39 to enforce all laws in this part (commencing with Section 10000),
40 Chapter 1 (commencing with Section 11000) of Part 2, and Part

3 (commencing with Section 11300) of this division, subject to subdivision (c) of Section 49 of the Financial Code, in a manner that achieves the maximum protection for the purchasers of real property and those persons dealing with real estate licensees and real estate appraisers.

(c) This section shall become operative on July 1, 2011.

SEC. 6. Section 11301 of the Business and Professions Code is amended to read:

11301. There is hereby created within the Business, Transportation and Housing Agency an Office of Real Estate Appraisers to administer and enforce this part.

This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7. Section 11301 is added to the Business and Professions Code, to read:

11301. (a) There is hereby created within the Department of Real Estate an Office of Real Estate Appraisers to administer and enforce this part.

(b) This section shall become operative on July 1, 2011.

SEC. 8. Section 11302 of the Business and Professions Code is amended to read:

11302. For the purpose of applying this part, the following terms, unless otherwise expressly indicated, shall mean and have the following definitions:

(a) "Agency" means the Business, Transportation and Housing Agency.

(b) "Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion in a federally related transaction as to the market value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

The term "appraisal" does not include an opinion given by a real estate licensee or engineer or land surveyor in the ordinary course of his or her business in connection with a function for which a license is required under Chapter 7 (commencing with Section 6700) or Chapter 15 (commencing with Section 8700) of Division 3, or Chapter 3 (commencing with Section 10130) or Chapter 7 (commencing with Section 10500) and the opinion shall not be

1 referred to as an appraisal. This part does not apply to a probate
2 referee acting pursuant to Sections 400 to 408, inclusive, of the
3 Probate Code unless the appraised transaction is federally related.

4 (c) “Appraisal Foundation” means the Appraisal Foundation
5 that was incorporated as an Illinois not-for-profit corporation on
6 November 30, 1987.

7 (d) “Appraisal Subcommittee” means the Appraisal
8 Subcommittee of the Federal Financial Institutions Examination
9 Council.

10 (e) “Director” means the Director of the Office of Real Estate
11 Appraisers.

12 (f) “Federal financial institutions regulatory agency” means the
13 Federal Reserve Board, Federal Deposit Insurance Corporation,
14 Office of the Comptroller of the Currency, Office of Thrift
15 Supervision, Federal Home Loan Bank System, National Credit
16 Union Administration, ~~the Resolution Trust Corporation~~, and any
17 other agency determined by the director to have jurisdiction over
18 transactions subject to this part.

19 (g) “Federally related real estate appraisal activity” means the
20 act or process of making or performing an appraisal on real estate
21 or real property in a federally related transaction and preparing an
22 appraisal as a result of that activity.

23 (h) “Federally related transaction” means any real estate-related
24 financial transaction which a federal financial institutions
25 regulatory agency engages in, contracts for or regulates and which
26 requires the services of a state licensed real estate appraiser
27 regulated by this part. This term also includes any transaction
28 identified as such by a federal financial institutions regulatory
29 agency.

30 (i) “License” means any license, certificate, permit, registration,
31 or other means issued by the office authorizing the person to whom
32 it is issued to act pursuant to this part within this state.

33 (j) “Licensure” means the procedures and requirements a person
34 shall comply with in order to qualify for issuance of a license and
35 includes the issuance of the license.

36 (k) “Office” means the Office of Real Estate Appraisers.

37 (l) “Secretary” means the Secretary of the Business,
38 Transportation and Housing Agency.

39 (m) “State licensed real estate appraiser” is a person who is
40 issued and holds a current valid license under this part.

1 (n) “Uniform Standards of Professional Appraisal Practice” are
2 the standards of professional appraisal practice established by the
3 Appraisal Foundation.

4 (o) “Course provider” means a person or entity that provides
5 educational courses related to professional appraisal practice.

6 (p) “Commissioner” means the Real Estate Commissioner.

7 SEC. 9. Section 11310 of the Business and Professions Code
8 is amended to read:

9 11310. The Governor shall appoint, subject to confirmation
10 by the Senate, the Director of the Office of Real Estate Appraisers
11 who shall administer the licensing and certification program for
12 real estate appraisers. In making the appointment, consideration
13 shall be given to the qualifications of an individual that demonstrate
14 knowledge of the real estate appraisal profession.

15 (a) (1) Prior to July 1, 2011, the director shall serve at the
16 pleasure of the Governor and shall administer the licensing and
17 certification program in consultation with the Governor and
18 secretary. The salary for the director shall be fixed and determined
19 by the secretary with approval of the Department of Personnel
20 Administration.

21 (2) On and after July 1, 2011, the director shall serve at the
22 pleasure of the Governor and shall administer the licensing and
23 certification program in consultation with the Governor and the
24 commissioner. The salary for the director shall be fixed and
25 determined by the commissioner with approval of the Department
26 of Personnel Administration.

27 ~~(3) Firewalls shall be maintained between the Department of~~
28 ~~Real Estate and the Office of Real Estate Appraisers and its~~
29 ~~employees as required in order to ensure compliance with federal~~
30 ~~law, to protect the independence of the appraiser regulatory~~
31 ~~function from realty-related activities, and to ensure that decisions~~
32 ~~relating to appraisal license issuance, revocation, and disciplinary~~
33 ~~actions shall be made by the Director of the Office of Real Estate~~
34 ~~Appraisers and not by the Real Estate Commissioner.~~

35 *(3) Institutional safeguards shall be established and maintained*
36 *between the Department of Real Estate and the Office of Real*
37 *Estate Appraisers and its employees to protect the independence*
38 *of the appraiser regulatory function from realty-related activities*
39 *consistent with Title XI of the Financial Institutions Reform,*
40 *Recovery, and Enforcement Act of 1989, as amended, by the Real*

1 *Estate Appraisal Reform Amendments (12 U.S.C. Secs. 3331-3351).*
2 *Decisions relating to appraisal license issuance, revocation, and*
3 *disciplinary actions shall be made by the Director of the Office of*
4 *Real Estate Appraisers and shall not be made or influenced by the*
5 *Department of Real Estate or the Real Estate Commissioner.*

6 (b) The director shall not be actively engaged in the appraisal
7 business or any other affected industry for the term of appointment,
8 and thereafter the director shall be subject to Section 87406 of the
9 Government Code.

10 (c) The director, in consultation with the secretary or, on and
11 after July 1, 2011, in consultation with the commissioner, and in
12 accordance with the State Civil Service Act, may appoint and fix
13 the compensation of legal, clerical, technical, investigation, and
14 auditing personnel as may be necessary to carry out this part. All
15 personnel shall perform their respective duties under the
16 supervision and direction of the director.

17 (d) The director may appoint not more than four deputy directors
18 as he or she deems appropriate. The deputy directors shall perform
19 their respective duties under the supervision and direction of the
20 director.

21 (e) Every power granted to or duty imposed upon the director
22 under this part may be exercised or performed in the name of the
23 director by the deputy directors, subject to conditions and
24 limitations as the director may prescribe.

25 SEC. 10. Section 11313 of the Business and Professions Code
26 is amended to read:

27 11313. The office is under the supervision and control of the
28 secretary. The duty of enforcing and administering this part is
29 vested in the director and he or she is responsible to the secretary
30 therefor. The director shall adopt and enforce rules and regulations
31 as are determined reasonably necessary to carry out the purposes
32 of this part. Those rules and regulations shall be adopted pursuant
33 to Chapter 3.5 (commencing with Section 11340) of Part 1 of
34 Division 3 of Title 2 of the Government Code.

35 This section shall become inoperative on July 1, 2011, and, as
36 of January 1, 2012, is repealed, unless a later enacted statute, that
37 becomes operative on or before January 1, 2012, deletes or extends
38 the dates on which it becomes inoperative and is repealed.

39 SEC. 11. Section 11313 is added to the Business and
40 Professions Code, to read:

1 11313. (a) The office is under the supervision and control of
2 the commissioner. The duty of enforcing and administering this
3 part is vested in the director and he or she is responsible to the
4 commissioner therefor. The director shall adopt and enforce rules
5 and regulations as are determined reasonably necessary to carry
6 out the purposes of this part. Those rules and regulations shall be
7 adopted pursuant to Chapter 3.5 (commencing with Section 11340)
8 of Part 1 of Division 3 of Title 2 of the Government Code.

9 (b) This section shall become operative on July 1, 2011.

10 SEC. 12. Section 25005 of the Corporations Code is amended
11 to read:

12 25005. "Commissioner" means the Commissioner of
13 Corporations.

14 This section shall become inoperative on July 1, 2011, and, as
15 of January 1, 2012, is repealed, unless a later enacted statute, that
16 becomes operative on or before January 1, 2012, deletes or extends
17 the dates on which it becomes inoperative and is repealed.

18 SEC. 13. Section 25005 is added to the Corporations Code, to
19 read:

20 25005. (a) As used in this part, the following terms have the
21 following meanings:

22 (1) "Department of Corporations" or "department" means the
23 Department of Financial Services, Division of Corporations.

24 (2) "Commissioner of Corporations" or "commissioner" means
25 the Director of the Division of Corporations.

26 (b) This section shall become operative on July 1, 2011.

27 SEC. 14. Section 31004 of the Corporations Code is amended
28 to read:

29 31004. "Commissioner" means the Commissioner of
30 Corporations.

31 This section shall become inoperative on July 1, 2011, and, as
32 of January 1, 2012, is repealed, unless a later enacted statute, that
33 becomes operative on or before January 1, 2012, deletes or extends
34 the dates on which it becomes inoperative and is repealed.

35 SEC. 15. Section 31004 is added to the Corporations Code, to
36 read:

37 31004. (a) As used in this part, the following terms have the
38 following meanings:

39 (1) "Department of Corporations" or "department" means the
40 Department of Financial Services, Division of Corporations.

(2) “Commissioner of Corporations” or “commissioner” means the Director of the Division of Corporations.

(b) This section shall become operative on July 1, 2011.

SEC. 16. Division 0.5 (commencing with Section 25) is added to the Financial Code, to read:

DIVISION 0.5. CONSOLIDATION OF FINANCIAL
SERVICES

25. (a) Effective July 1, 2011, there shall be in the state government, in the Business, Transportation and Housing Agency, a Department of Financial Services, which shall consist of the following:

(1) The Division of Financial Institutions, comprised of the former Department of Financial Institutions, which shall be primarily responsible for the execution of all laws previously under that department’s jurisdiction subject to oversight by the Commissioner of Financial Services.

(2) The Division of Corporations, comprised of the former Department of Corporations, which shall be primarily responsible for the execution of all laws previously under that department’s jurisdiction subject to oversight by the Commissioner of Financial Services.

~~(c) The Office of Financial and Real Estate Consumer Advocacy, which shall advise the Commissioner of Financial Services and the Real Estate Commissioner on how the Department of Financial Services can provide a high degree of service and protection to the public, shall be responsible for public outreach to financial and real estate consumers, with the cooperation of the Departments of Financial Services and Real Estate and shall perform such other duties as determined by the Commissioner of Financial Services.~~

~~(d) (1) Effective July 1, 2012, the Department of Financial Services, through the Division of Corporations, shall license and regulate mortgage brokers, including those real estate licensees who arrange loans secured by real property in the state, and shall license and regulate those real estate licensees who provide commercial and residential lending, including, but not limited to, those activities described in Section 10008.5, Section 10030,~~

1 subdivisions (d) and (e) of Section 10131, and Section 10131.1 of
2 the Business and Professions Code, while maintaining the same
3 level of consumer protection now afforded. Nothing in this act or
4 the regulations it authorizes shall expand or diminish existing
5 consumer protections.

6 (2) (A) On or before January 1, 2012, the Commissioner of
7 Financial Services, in consultation with the Director of the Division
8 of Corporations and the Real Estate Commissioner, shall adopt
9 regulations creating a new license or licenses and setting related
10 fees such as the Commissioner of Financial Services believes
11 appropriate for the Department of Financial Services, through the
12 Division of Corporations, to assume responsibility for the
13 provisions of the Real Estate Law that allow real estate licensees
14 to provide commercial and residential lending, mortgage brokerage
15 services, and business opportunity activities, including, but not
16 limited to, those activities described in Section 10008.5, Section
17 10030, subdivisions (d) and (e) of Section 10131, and Section
18 10131.1 of the Business and Professions Code, while maintaining
19 the same level of consumer protection now afforded. Nothing in
20 this bill or the regulations it authorizes shall contract existing
21 consumer protections.

22 (B) As of the effective date of those regulations, which shall be
23 on or after July 1, 2012, persons holding a license or licenses and
24 license endorsements issued by the Department of Real Estate
25 shall no longer be authorized to provide lending, commercial and
26 residential mortgage brokerage services, and business opportunity
27 activities, including, but not limited to, those activities described
28 in Section 10008.5, Section 10030, subdivisions (d) and (e) of
29 Section 10131, and Section 10131.1 of the Business and
30 Professions Code, without first obtaining a license to do so from
31 the Division of Corporations.

32 (3) (A) *The Office of Financial and Real Estate Consumer*
33 *Advocacy, which shall act in an advisory capacity to the*
34 *Department of Financial Services and the Department of Real*
35 *Estate and shall not have rulemaking authority. The office's goal*
36 *shall be to assist these departments with providing a high degree*
37 *of service and protection to the public.*

38 (B) *The Office of Financial and Real Estate Consumer Advocacy*
39 *may advise the departments regarding the effectiveness of and*

1 possible improvement of the following with respect to each
2 department:

3 (i) Internet Web sites, brochures, and other public
4 communications.

5 (ii) Complaint processes.

6 (iii) Public outreach.

7 (iv) Regulations.

8 (v) Any other functions as determined by the Commissioner of
9 Financial Services or the Real Estate Commissioner.

10 (C) The Office of Financial and Real Estate Consumer Advocacy
11 may also advise the departments regarding developments in the
12 following:

13 (i) Innovative financial products and services.

14 (ii) Efforts to assist low-income earners enter the financial
15 mainstream and build good credit.

16 (iii) Financial literacy.

17 (iv) Federal oversight of consumer issues.

18 (v) Any other topics as determined by the Commissioner of
19 Financial Services or the Real Estate Commissioner.

20 (b) (1) Effective July 1, 2012, the Department of Real Estate
21 shall transfer to the Division of Corporations within the
22 Department of Financial Services, the regulatory oversight,
23 including, without limitation, licensing and enforcement, for all
24 residential real property loan servicers and brokers, and those
25 salespersons performing residential loan servicing and lending
26 activities under the supervision of brokers, including, but not
27 limited to, those persons engaged in any of the activities described
28 in subdivision (d) of Section 10131 of the Business and Professions
29 Code, the residential lending and servicing activities described in
30 subdivision (e) of Section 10131 of the Business and Professions
31 Code, and any other residential lending and servicing activities
32 covered by the Real Estate Law (Division 4 (commencing with
33 Section 10000) of the Business and Professions Code), and those
34 persons required to be licensed by the state as “loan originators,”
35 pursuant to the Secure and Fair Enforcement for Mortgage
36 Licensing Act (12 U.S.C. Secs. 5101-5116) and all applicable state
37 laws.

38 (2) Notwithstanding paragraph (1), all persons described in
39 paragraph (1) and formerly licensed by the Department of Real
40 Estate shall continue to have the authority to engage in all

1 *activities relating to, among other things, lending, brokering, and*
2 *servicing previously authorized pursuant to the Real Estate Law*
3 *(Division 4 (commencing with Section 10000) of the Business and*
4 *Professions Code).*

5 (3) *By July 1, 2011, the Commissioner of Financial Services*
6 *shall adopt, amend, or repeal regulations and rules that are*
7 *reasonably necessary and appropriate to implement the transfer*
8 *from the Department of Real Estate described in paragraph (1)*
9 *and to license, regulate, enforce, and discipline those persons*
10 *engaged in residential real estate financial services as described*
11 *in paragraph (1).*

12 ~~(e)~~
13 (c) ~~Nothing in this bill division shall expand or diminish existing~~
14 ~~authorities of the existing departments or commissioners except~~
15 ~~as set forth in subdivision (d) of Section 25 paragraph (3) of~~
16 ~~subdivision (a) and subdivision (b).~~ Nothing in this bill division
17 shall expand or ~~contract~~ diminish any existing duties, including
18 fiduciary duties, of their licensees. Nothing in this bill division or
19 the regulations it authorizes shall ~~contract~~ diminish existing
20 consumer protections.

21 26. The chief officer of the Department of Financial Services
22 shall be the Commissioner of Financial Services. The
23 Commissioner of Financial Services shall be the head of the
24 department and, except as otherwise provided in this code, shall
25 be subject to the provisions of the Government Code relating to
26 department heads, but need not reside in Sacramento.

27 27. The Commissioner of Financial Services shall be appointed
28 by the Governor and shall hold office at the pleasure of the
29 Governor. The appointment of the commissioner shall be subject
30 to confirmation by the Senate. The commissioner shall receive an
31 annual salary fixed by the Secretary of the Business, Transportation
32 and Housing Agency and the Department of Personnel
33 Administration.

34 28. The Commissioner of Financial Services shall be a citizen
35 of the United States. The commissioner shall be chosen solely for
36 his or her qualifications and fitness to perform the duties of his or
37 her office.

38 29. Before entering upon the duties of his or her office, the
39 Commissioner of Financial Services shall take and subscribe to

1 the constitutional oath of office and file the same with the Secretary
2 of State.

3 30. The Commissioner of Financial Services shall be
4 responsible for the performance of all duties, the exercise of all
5 powers and jurisdiction, and the assumption and discharge of all
6 responsibilities formerly vested by law in the Department of
7 Financial Institutions and the Department of Corporations. As
8 described in Section 32, the Director of the Division of Financial
9 Institutions and the Director of the Division of Corporations shall
10 be vested with the primary responsibility for all of the duties,
11 powers, and jurisdiction of the former Commissioner of Financial
12 Institutions and the Commissioner of Corporations, respectively,
13 subject to oversight by the Commissioner of Financial Services.
14 The commissioner has, and may exercise, all the powers necessary
15 or convenient for the administration and enforcement of these
16 laws. The commissioner may issue such rules and regulations
17 consistent with law as he or she may deem necessary or advisable
18 in executing the powers, duties, and responsibilities of the
19 Department of Financial Services. *The Commissioner of Financial*
20 *Services shall be responsible for the performance of those duties,*
21 *the exercise of those powers and jurisdiction, and the assumption*
22 *and discharge of those responsibilities formerly vested by law in*
23 *the Real Estate Commissioner and transferred to the Commissioner*
24 *of Financial Services pursuant to subdivision (b) of Section 25.*

25 32. Effective July 1, 2011, the Division of Financial Institutions
26 shall be headed by the former Commissioner of Financial
27 Institutions who shall have the title Director of the Division of
28 Financial Institutions. Effective July 1, 2011, the Division of
29 Corporations shall be headed by the former Commissioner of
30 Corporations who shall have the title Director of the Division of
31 Corporations. ~~After July 1, 2011, the Commissioner of Financial~~
32 ~~Services shall have the authority to appoint the directors of these~~
33 ~~divisions who shall hold office at the commissioner's pleasure.~~
34 *Corporations. After July 1, 2011, the Governor shall appoint a*
35 *Director of the Division of Financial Services and a Director of*
36 *the Division of Corporations. These directors shall hold office at*
37 *the pleasure of the Governor and these appointments shall be*
38 *subject to confirmation by the Senate.*

39 33. The Office of Financial and Real Estate Consumer
40 Advocacy shall be headed by the Director of the Office of Financial

1 and Real Estate Consumer Advocacy who shall be appointed by
2 the Governor and shall serve at the ~~commissioner's pleasure~~
3 *Governor's pleasure. This appointment shall be subject to*
4 *confirmation by the Senate.* The Director of the Office of Financial
5 and Real Estate Consumer Advocacy shall be chosen solely for
6 his or her qualifications and fitness to perform the duties of his or
7 her office. The annual salary of the Director of the Office of
8 Financial and Real Estate Consumer Advocacy shall be fixed by
9 the Secretary of the Business, Transportation and Housing Agency
10 and the Department of Personnel Administration.

11 34. (a) Effective July 1, 2011, the Commissioner of Financial
12 Services and the Department of Financial Services shall succeed
13 to all the rights and property of the Commissioner of Corporations
14 and the Commissioner of Financial Institutions, and the Department
15 of Corporations and the Department of Financial Institutions,
16 respectively. The Commissioner of Financial Services and the
17 Department of Financial Services shall be subject to all the debts
18 and liabilities of the predecessor Commissioner of Corporations
19 and the Commissioner of Financial Institutions, and the Department
20 of Corporations and the Department of Financial Institutions, as
21 if the Commissioner of Financial Services and the Department of
22 Financial Services had incurred them.

23 (b) Any action or proceeding by or against the Commissioner
24 of Corporations, the Commissioner of Financial Institutions, the
25 Department of Corporations, or the Department of Financial
26 Institutions may be prosecuted to judgment, which shall bind the
27 Commissioner of Financial Services or the Department of Financial
28 Services, respectively. Alternatively, the Commissioner of
29 Financial Services or the Department of Financial Services may
30 be proceeded against or substituted in place of the Commissioner
31 of Corporations or the Commissioner of Financial Institutions and
32 the Department of Corporations or the Department of Financial
33 Institutions, respectively.

34 (c) The following funds and accounts shall continue *in existence*
35 and shall be under the jurisdiction of the Commissioner of Financial
36 Services without being commingled. These funds shall only be
37 used for purposes set forth in existing statutes or regulations
38 pertaining to them, unless a subsequent statute is enacted changing
39 them.

40 (1) The Financial Institutions Fund created by Section 265.

1 (2) The Credit Union Fund created by Section 14354.

2 (3) The Guaranty Corporation Fund created by Section 18535.

3 (4) The State Corporations Fund created by subdivision (b) of
4 Section 13978.6 of the Government Code.

5 (5) Any other fund or account subject to the jurisdiction of the
6 former Department of Corporations or the former Department of
7 Financial Institutions.

8 (d) All agreements entered into with, and orders and regulations
9 issued by, the Commissioner of Corporations or the Commissioner
10 of Financial Institutions, or the Department of Financial Institutions
11 or the Department of Corporations, shall continue in effect as if
12 the agreements were entered into with, and the orders and
13 regulations were issued by, the Commissioner of Financial Services
14 or the Department of Financial Services.

15 35. (a) The Commissioner of Financial Services may make
16 the agreements that he or she deems necessary or appropriate in
17 exercising his or her powers.

18 (b) (1) The agreements authorized under subdivision (a) may
19 include, but are not limited to, agreements with agencies of this
20 state, of other states of the United States, of the United States, or
21 of foreign nations that regulate financial institutions, relating to
22 oversight of financial services.

23 (2) Any agreement with a governmental agency that regulates
24 financial services is exempt from the advertising and competitive
25 bidding requirements of the Public Contract Code.

26 36. Notwithstanding any other law, the Commissioner of
27 Financial Services may adopt and implement any method of
28 accepting electronic filings of applications, reports, or other
29 matters, which, in the opinion of the commissioner, is secure. Any
30 method of electronic filing chosen by the commissioner shall
31 include a method to verify the identity of the person making the
32 filing. The verification shall be deemed to satisfy all other
33 verifications required by this division, and shall have the same
34 force and effect as the use of manual signatures.

35 37. The Commissioner of Financial Services shall appoint a
36 chief deputy who shall hold office at the pleasure of the
37 Commissioner of Financial Services. The annual salary of the chief
38 deputy shall be fixed by the Commissioner of Financial Services
39 with the approval of the Director of Finance. The chief deputy
40 shall be chosen solely for his or her qualifications and fitness to

1 perform the duties of his or her office and for the ability to succeed
2 to the office of the Commissioner of Financial Services, if needed.
3 If the Commissioner of Financial Services is unable to perform
4 his or her duties for more than 30 consecutive days or if the office
5 of the Commissioner of Financial Services becomes vacant, the
6 chief deputy shall have all the powers and duties of the
7 Commissioner of Financial Services until the return or recovery
8 of the Commissioner of Financial Services, or, in case of a vacancy,
9 until a new Commissioner of Financial Services is appointed by
10 the Governor and qualifies to hold office.

11 38. The Commissioner of Financial Services may employ
12 deputies in addition to the chief deputy and other employees that
13 he or she may need to discharge in a proper manner the duties
14 imposed upon him or her by law. The commissioner shall prescribe
15 their duties and fix their compensation in accordance with
16 classifications made by the State Personnel Board. The
17 commissioner may also, at those times and on those terms as may
18 be approved by the Governor, employ those attorneys as he or she
19 may need.

20 39. Before entering upon the duties of his or her office, each
21 deputy of the Commissioner of Financial Services, the Director
22 of the Division of Financial Institutions, the Director of the
23 Division of Corporations, and the Director of the Office of
24 Financial and Real Estate Consumer Advocacy shall take and
25 subscribe to the constitutional oath of office and file the same with
26 the Secretary of State.

27 40. The Commissioner of Financial Services may require, at
28 any time, of any deputy, the Director of the Division of Financial
29 Institutions, the Director of the Division of Corporations, the
30 Director of the Office of Financial and Real Estate Consumer
31 Advocacy, or any other employee of the department, an official
32 bond in such amount as he or she may deem necessary. The
33 premium for bonds required by the commissioner shall be an
34 expense of the department.

35 41. On or before July 1, 2011, the Commissioner of Financial
36 Services shall adopt and promulgate a Conflict of Interest Code
37 pursuant to the provisions of Article 3 of Chapter 3 of Title 9 of
38 the Government Code (commencing with Section 87300). The
39 Conflict of Interest Code shall have the force of law and any
40 violation of the Conflict of Interest Code by a designated employee

1 shall be deemed a violation of Chapter 3 of Title 9 of the
2 Government Code.

3 42. In addition to the offices previously maintained by the
4 Department of Financial Institutions and the Department of
5 Corporations, the Commissioner of Financial Services may
6 establish offices in any other location in the state that he or she
7 considers appropriate. The commissioner shall provide at the
8 expense of the department such office space, furniture, and
9 equipment as may be necessary or convenient for the transaction
10 of the business of the Department of Financial Services.

11 43. The Department of Financial Services may expend moneys
12 in accordance with law for the necessary travel expenses of officers
13 and employees of the department while traveling in the line of
14 their duties either within or without the state.

15 44. The Commissioner of Financial Services shall adopt and
16 keep an official seal. Papers executed by the Commissioner of
17 Financial Services in his or her official capacity pursuant to law
18 and bearing the seal, or copies thereof certified by him or her, shall
19 be received in evidence in like manner as the original and may be
20 recorded in the same manner and with the same effect as a deed
21 regularly acknowledged.

22 45. Notwithstanding any other law, as of July 1, 2011, all
23 references to the Department of Financial Institutions shall be
24 deemed to refer to the Division of Financial Institutions within the
25 Department of Financial Services and all references to the
26 Department of Corporations shall be deemed to refer to the
27 Division of Corporations within the Department of Financial
28 Services.

29 46. (a) The Department of Real Estate shall continue to exist
30 in state government, subject to the limitations, ~~effective July 1,~~
31 ~~2012, set forth in subdivision (d)~~ *set forth in subdivision (b)* of
32 Section 25 with regard to authority that is transferred to the
33 Department of Financial Services, Division of Corporations, and
34 shall continue to be located within the Business, Transportation
35 and Housing Agency.

36 (b) Effective July 1, 2011, the Office of Real Estate Appraisers
37 shall be transferred to the Department of Real Estate. The Office
38 of Real Estate Appraisers shall be primarily responsible for the
39 execution of all laws previously under its jurisdiction subject to
40 oversight by the Director of the Office of Real Estate Appraisers.

The Real Estate Appraisers' Licensing and Certification Law (Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code), shall be deemed to be part of the Real Estate Law (Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code).

47. After transfer to the Department of Real Estate on July 1, 2011, the Office of Real Estate Appraisers shall continue to be headed by the Director of the Office of Real Estate Appraisers. The Director of the Office of Real Estate Appraisers shall be appointed by the Governor and shall serve at his or her pleasure. The qualifications for the position of Director of the Office of Real Estate Appraisers shall remain unchanged.

48. On or before January 1, 2011, and for purposes of implementation of Section 25, the Secretary of the Business, Transportation and Housing Agency, in consultation with the Commissioner of Financial Institutions, the Commissioner of Corporations, and the Real Estate Commissioner, shall submit a report to the Legislature that addresses the following:

~~(a) Recommendations regarding all appropriate areas for consolidation of the operations, licensing frameworks, regulations, and other aspects of, on and after July 1, 2011, the Department of Financial Institutions and Department of Corporations, and of pertinent commercial and residential lending, mortgage brokerage, and business opportunity activities by Department of Real Estate licensees.~~

(a) Recommendations regarding any further reorganization of the Department of Financial Services that may be advisable beyond that set forth herein.

(b) Recommendations regarding any new or different authorities needed to address any gaps in, or shortcomings of, the regulation of financial services in California.

(c) Recommendations regarding the possible consolidation of *the regulation of business opportunities that remains in the Department of Real Estate* or the regulation of any other financial services that currently takes place outside of the jurisdiction of the Business, Transportation and Housing Agency.

(d) Recommendations regarding the consolidation of the regulation of home mortgage lending in California, including, but not limited to, recommendations on licensing schemes, including the California Finance Lenders Law (Division 9 (commencing

1 with Section 22000), the California Residential Mortgage Lending
2 Act (Division 20 (commencing with Section 50000), the Real
3 Estate Law (Part 1 (commencing with Section 10000) of Division
4 4 of the Business and Professions Code), and laws governing the
5 operation of state and federally chartered banks or credit unions.

6 (e) Recommendations regarding any firewalls between the future
7 Department of Financial Services and its divisions and the Office
8 of Financial and Real Estate Consumer Advocacy, or employees,
9 that may be advisable.

10 ~~(f) Recommendations regarding an efficient and effective~~
11 ~~implementation of the federal Secure and Fair Enforcement for~~
12 ~~Mortgage Licensing Act of 2008 (Public Law 110-289) within the~~
13 ~~Department of Financial Services.~~

14 ~~(g)~~

15 (f) Recommendations regarding additional changes that should
16 be made in light of any developments at the federal level regarding
17 the regulation of financial services.

18 ~~(h)~~

19 (g) Recommendations to better serve and protect financial and
20 real estate consumers in California, including, but not limited to,
21 public outreach and public protections.

22 ~~(i)~~

23 (h) Recommendations regarding the advisability of establishing
24 new recovery accounts, *in addition to the Real Estate Financial*
25 *Services Recovery Account described in Division 20.5 (commencing*
26 *with Section 55000)*, to protect financial services and real estate
27 consumers in California.

28 ~~(j)~~

29 (i) Recommendations regarding any staffing changes that are
30 advisable.

31 ~~(k)~~

32 (j) Recommendations regarding any information technology
33 changes that are advisable.

34 ~~(l)~~

35 (k) Recommendations regarding the optimal number, size, and
36 locations of offices for the Department of Financial Services and
37 its divisions and the Office of Financial and Real Estate Consumer
38 Advocacy.

39 ~~(m)~~

1 (l) Recommendations regarding the structure of fees and other
2 revenue sources, as well as reserve accounts.

3 ~~(n)~~

4 (m) The estimated cost impacts of all recommendations made
5 and details regarding how those estimated impacts are expected
6 to manifest.

7 ~~(o)~~

8 (n) Any other recommendations the Secretary of the Business,
9 Transportation and Housing Agency believes would be helpful.

10 ~~(p)~~

11 (o) Recommendations regarding any necessary statutory changes
12 required to achieve the recommendations made in the report.

13 ~~(q)~~

14 (p) Recommendations regarding any necessary regulation
15 changes required to achieve the recommendations made in the
16 report.

17 49. On or before January 1, 2011, and for purposes of
18 implementing Sections 46 and 47, the Secretary of the Business,
19 Transportation and Housing Agency in consultation with the Real
20 Estate Commissioner and the Director of the Office of Real Estate
21 Appraisers shall submit a joint report to the Legislature that
22 addresses the following:

23 (a) Recommendations regarding the consolidation of the
24 operations, licensing frameworks, and other aspects of the
25 Department of Real Estate and the Office of Real Estate Appraisers.

26 (b) Recommendations regarding any new or different authorities
27 needed to effect the consolidation.

28 (c) Recommendations regarding any necessary statutory changes
29 required to achieve the recommendations made in the report.

30 (d) Recommendations regarding any necessary regulation
31 changes required to achieve the recommendations in the report.

32 (e) Recommendations regarding the structure of fees and other
33 revenue sources, as well as reserve accounts.

34 (f) Recommendations regarding the future of the Recovery
35 Account of the Real Estate Fund and the advisability of establishing
36 additional or different recovery accounts to protect consumers in
37 real estate transactions in California.

38 (g) Recommendations regarding staffing changes that are
39 advisable.

1 (h) Recommendations regarding technology changes that are
2 advisable.

3 (i) Recommendations regarding state representation at
4 administrative hearings.

5 (j) The estimated cost impacts of all recommendations made
6 and details regarding how those estimated impacts are expected
7 to manifest.

8 (k) Any other recommendations that the Real Estate
9 Commissioner and the Director of the Office of Real Estate
10 Appraisers believes would be helpful.

11 (l) Recommendations addressing any federal level restrictions
12 or impositions on such consolidation of entities.

13 50. Fourteen days after the effective date of this act, the
14 Secretary of the Business, Transportation and Housing Agency
15 shall post the items listed in Sections 48 and 49 on the Internet
16 Web site of the agency in a manner that provides for public
17 comment for a period of 120 days. The posting shall also set forth
18 a mailing address for members of the public to use should they
19 choose to submit comments by mail instead of via the Internet
20 Web site during this period. All comments shall specifically
21 reference the sections to which they are directed. Public comments
22 received shall be considered in making the secretary's final
23 recommendations pursuant to Sections 48 and 49.

24 SEC. 17. Section 112 of the Financial Code is amended to read:

25 112. "Commissioner" means the Commissioner of Financial
26 Institutions and "department" means the Department of Financial
27 Institutions.

28 This section shall become inoperative on July 1, 2011, and, as
29 of January 1, 2012, is repealed, unless a later enacted statute, that
30 becomes operative on or before January 1, 2012, deletes or extends
31 the dates on which it becomes inoperative and is repealed.

32 SEC. 18. Section 112 is added to the Financial Code, to read:

33 112. (a) As used in this division, the following terms have the
34 following meanings:

35 (1) "Department of Financial Institutions" or "department"
36 means the Department of Financial Services, Division of Financial
37 Institutions.

38 (2) "Commissioner of Financial Institutions" or "commissioner"
39 means the Director of the Division of Financial Institutions.

40 (b) This section shall become operative on July 1, 2011.

1 SEC. 19. Section 210 of the Financial Code is amended to read:
2 210. The chief officer of the Department of Financial
3 Institutions is the Commissioner of Financial Institutions. The
4 Commissioner of Financial Institutions is the head of the
5 department and, except as otherwise provided in this code, is
6 subject to the provisions of the Government Code relating to
7 department heads, but need not reside in Sacramento.

8 This section shall become inoperative on July 1, 2011, and, as
9 of January 1, 2012, is repealed, unless a later enacted statute, that
10 becomes operative on or before January 1, 2012, deletes or extends
11 the dates on which it becomes inoperative and is repealed.

12 SEC. 20. Section 210 is added to the Financial Code, to read:
13 210. The Director of the Division of Financial Institutions is
14 the head of the Division of Financial Institutions, as specified in
15 Division 0.5 (commencing with Section 25).

16 This section shall become operative on July 1, 2011.

17 SEC. 21. Section 252 of the Financial Code is amended to read:

18 252. The commissioner shall adopt and keep an official seal.
19 Papers executed by the commissioner in his or her official capacity
20 pursuant to law and bearing the seal, or copies thereof certified by
21 him or her, shall be received in evidence in like manner as the
22 original and may be recorded in the same manner and with the
23 same effect as a deed regularly acknowledged.

24 This section shall become inoperative on July 1, 2011, and, as
25 of January 1, 2012, is repealed, unless a later enacted statute, that
26 becomes operative on or before January 1, 2012, deletes or extends
27 the dates on which it becomes inoperative and is repealed.

28 SEC. 22. Section 4805.055 of the Financial Code is amended
29 to read:

30 4805.055. "Commissioner" means the Commissioner of
31 Financial Institutions.

32 This section shall become inoperative on July 1, 2011, and, as
33 of January 1, 2012, is repealed, unless a later enacted statute, that
34 becomes operative on or before January 1, 2012, deletes or extends
35 the dates on which it becomes inoperative and is repealed.

36 SEC. 23. Section 4805.055 is added to the Financial Code, to
37 read:

38 4805.055. (a) As used in this division, the following terms
39 have the following meanings:

1 (1) “Department of Financial Institutions” or “department”
2 means the Department of Financial Services, Division of Financial
3 Institutions.

4 (2) “Commissioner of Financial Institutions” or “commissioner”
5 means the Director of the Division of Financial Institutions.

6 (b) This section shall become operative on July 1, 2011.

7 SEC. 24. Section 4970 of the Financial Code is amended to
8 read:

9 4970. For purposes of this division:

10 (a) “Annual percentage rate” means the annual percentage rate
11 for the loan calculated according to the provisions of the federal
12 Truth in Lending Act and the regulations adopted thereunder by
13 the Federal Reserve Board.

14 (b) “Covered loan” means a consumer loan in which the original
15 principal balance of the loan does not exceed the most current
16 conforming loan limit for a single-family first mortgage loan
17 established by the Federal National Mortgage Association in the
18 case of a mortgage or deed of trust, and where one of the following
19 conditions are met:

20 (1) For a mortgage or deed of trust, the annual percentage rate
21 at consummation of the transaction will exceed by more than eight
22 percentage points the yield on Treasury securities having
23 comparable periods of maturity on the 15th day of the month
24 immediately preceding the month in which the application for the
25 extension of credit is received by the creditor.

26 (2) The total points and fees payable by the consumer at or
27 before closing for a mortgage or deed of trust will exceed 6 percent
28 of the total loan amount.

29 (c) “Points and fees” shall include the following:

30 (1) All items required to be disclosed as finance charges under
31 Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal
32 Regulations, including the Official Staff Commentary, as amended
33 from time to time, except interest.

34 (2) All compensation and fees paid to mortgage brokers in
35 connection with the loan transaction.

36 (3) All items listed in Section 226.4(c)(7) of Title 12 of the Code
37 of Federal Regulations, only if the person originating the covered
38 loan receives direct compensation in connection with the charge.

39 (d) “Consumer loan” means a consumer credit transaction that
40 is secured by real property located in this state used, or intended

1 to be used or occupied, as the principal dwelling of the consumer
2 that is improved by a one-to-four residential unit. “Consumer loan”
3 does not include a reverse mortgage, an open line of credit as
4 defined in Part 226 of Title 12 of the Code of Federal Regulations
5 (Regulation Z), or a consumer credit transaction that is secured by
6 rental property or second homes. “Consumer loan” does not include
7 a bridge loan. For purposes of this division, a bridge loan is any
8 temporary loan, having a maturity of one year or less, for the
9 purpose of acquisition or construction of a dwelling intended to
10 become the consumer’s principal dwelling.

11 (e) “Original principal balance” means the total initial amount
12 the consumer is obligated to repay on the loan.

13 (f) “Licensing agency” shall mean the Department of Real Estate
14 for licensed real estate brokers, the Department of Corporations
15 for licensed residential mortgage lenders and licensed finance
16 lenders and brokers, and the Department of Financial Institutions
17 for commercial and industrial banks and savings associations and
18 credit unions organized in this state. On and after July 1, 2011, or
19 as otherwise specified, “licensing agency” shall instead be defined
20 as specified in Sections 25, 45, and 46.

21 (g) “Licensed person” means a real estate broker licensed under
22 the Real Estate Law (Part 1 (commencing with Section 10000) of
23 Division 4 of the Business and Professions Code), a finance lender
24 or broker licensed under the California Finance Lenders Law
25 (Division 9 (commencing with Section 22000)), a residential
26 mortgage lender licensed under the California Residential Mortgage
27 Lending Act (Division 20 (commencing with Section 50000)), a
28 commercial or industrial bank organized under the Banking Law
29 (Division 1 (commencing with Section 99)), a savings association
30 organized under the Savings Association Law (Division 2
31 (commencing with Section 5000)), and a credit union organized
32 under the California Credit Union Law (Division 5 (commencing
33 with Section 14000)). Nothing in this division shall be construed
34 to prevent any enforcement by a governmental entity against any
35 person who originates a loan and who is exempt or excluded from
36 licensure by all of the licensing agencies, based on a violation of
37 any provision of this division. Nothing in this division shall be
38 construed to prevent the Department of Real Estate from enforcing
39 this division against a licensed salesperson employed by a licensed
40 real estate broker as if that salesperson were a licensed person

1 under this division. A licensed person includes any person engaged
2 in the practice of consumer lending, as defined in this division, for
3 which a license is required under any other provision of law, but
4 whose license is invalid, suspended or revoked, or where no license
5 has been obtained.

6 (h) “Originate” means to arrange, negotiate, or make a consumer
7 loan.

8 (i) “Servicer” has the same meaning provided in Section 6 (i)(2)
9 of the Real Estate Settlement Procedures Act of 1974.

10 SEC. 25. Section 5104 of the Financial Code is amended to
11 read:

12 5104. “Commissioner” means the Commissioner of Financial
13 Institutions.

14 This section shall become inoperative on July 1, 2011, and, as
15 of January 1, 2012, is repealed, unless a later enacted statute, that
16 becomes operative on or before January 1, 2012, deletes or extends
17 the dates on which it becomes inoperative and is repealed.

18 SEC. 26. Section 5104 is added to the Financial Code, to read:

19 5104. As used in this division, “Commissioner of Financial
20 Institutions” or “commissioner” means the Director of the Division
21 of Financial Institutions.

22 This section shall become operative on July 1, 2011.

23 SEC. 27. Section 5106 of the Financial Code is amended to
24 read:

25 5106. “Department” means the Department of Financial
26 Institutions.

27 This section shall become inoperative on July 1, 2011, and, as
28 of January 1, 2012, is repealed, unless a later enacted statute, that
29 becomes operative on or before January 1, 2012, deletes or extends
30 the dates on which it becomes inoperative and is repealed.

31 SEC. 28. Section 5106 is added to the Financial Code, to read:

32 5106. As used in this division, “Department of Financial
33 Institutions” or “department” means the Department of Financial
34 Services, Division of Financial Institutions.

35 This section shall become operative on July 1, 2011.

36 SEC. 29. Section 12003 of the Financial Code is amended to
37 read:

38 12003. “Commissioner” means the Commissioner of
39 Corporations of the State of California, or any deputy, investigator,
40 auditor, or any other person employed by him or her.

1 This section shall become inoperative on July 1, 2011, and, as
2 of January 1, 2012, is repealed, unless a later enacted statute, that
3 becomes operative on or before January 1, 2012, deletes or extends
4 the dates on which it becomes inoperative and is repealed.

5 SEC. 30. Section 12003 is added to the Financial Code, to read:

6 12003. (a) As used in this division, the following terms have
7 the following meanings:

8 (1) "Department of Corporations" or "department" means the
9 Department of Financial Services, Division of Corporations.

10 (2) "Commissioner of Corporations" or "commissioner" means
11 the Director of the Division of Corporations, or any deputy,
12 investigator, auditor, or any other person employed by him or her.

13 (b) This section shall become operative on July 1, 2011.

14 SEC. 31. Section 14003 of the Financial Code is amended to
15 read:

16 14003. "Commissioner" means the Commissioner of Financial
17 Institutions of the State of California.

18 This section shall become inoperative on July 1, 2011, and, as
19 of January 1, 2012, is repealed, unless a later enacted statute, that
20 becomes operative on or before January 1, 2012, deletes or extends
21 the dates on which it becomes inoperative and is repealed.

22 SEC. 32. Section 14003 is added to the Financial Code, to read:

23 14003. (a) As used in this division, the following terms have
24 the following meanings:

25 (1) "Department of Financial Institutions" or "department"
26 means the Department of Financial Services, Division of Financial
27 Institutions.

28 (2) "Commissioner of Financial Institutions" or "commissioner"
29 means the Director of the Division of Financial Institutions.

30 (b) This section shall become operative on July 1, 2011.

31 SEC. 33. Section 17002 of the Financial Code is amended to
32 read:

33 17002. "Commissioner" means the Commissioner of
34 Corporations.

35 This section shall become inoperative on July 1, 2011, and, as
36 of January 1, 2012, is repealed, unless a later enacted statute, that
37 becomes operative on or before January 1, 2012, deletes or extends
38 the dates on which it becomes inoperative and is repealed.

39 SEC. 34. Section 17002 is added to the Financial Code, to read:

1 17002. (a) As used in this division, the following terms have
2 the following meanings:

3 (1) “Department of Corporations” or “department” means the
4 Department of Financial Services, Division of Corporations.

5 (2) “Commissioner of Corporations” or “commissioner” means
6 the Director of the Division of Corporations.

7 (b) This section shall become operative on July 1, 2011.

8 SEC. 35. Section 18002 of the Financial Code is amended to
9 read:

10 18002. “Commissioner” means the Commissioner of Financial
11 Institutions of the State of California.

12 This section shall become inoperative on July 1, 2011, and, as
13 of January 1, 2012, is repealed, unless a later enacted statute, that
14 becomes operative on or before January 1, 2012, deletes or extends
15 the dates on which it becomes inoperative and is repealed.

16 SEC. 36. Section 18002 is added to the Financial Code, to read:

17 18002. As used in this division, “Commissioner of Financial
18 Institutions” or “commissioner” means the Director of the Division
19 of Financial Institutions.

20 This section shall become operative on July 1, 2011.

21 SEC. 37. Section 18002.5 of the Financial Code is amended
22 to read:

23 18002.5. “Department” means the Department of Financial
24 Institutions.

25 This section shall become inoperative on July 1, 2011, and, as
26 of January 1, 2012, is repealed, unless a later enacted statute, that
27 becomes operative on or before January 1, 2012, deletes or extends
28 the dates on which it becomes inoperative and is repealed.

29 SEC. 38. Section 18002.5 is added to the Financial Code, to
30 read:

31 18002.5. As used in this division, “Department of Financial
32 Institutions” or “department” means the Department of Financial
33 Services, Division of Financial Institutions.

34 This section shall become operative on July 1, 2011.

35 SEC. 39. Section 22005 of the Financial Code is amended to
36 read:

37 22005. “Commissioner” means the Commissioner of
38 Corporations.

39 This section shall become inoperative on July 1, 2011, and, as
40 of January 1, 2012, is repealed, unless a later enacted statute, that

1 becomes operative on or before January 1, 2012, deletes or extends
2 the dates on which it becomes inoperative and is repealed.

3 SEC. 40. Section 22005 is added to the Financial Code, to read:

4 22005. (a) As used in this division, the following terms have
5 the following meanings:

6 (1) "Department of Corporations" or "department" means the
7 Department of Financial Services, Division of Corporations.

8 (2) "Commissioner of Corporations" or "commissioner" means
9 the Director of the Division of Corporations.

10 (b) This section shall become operative on July 1, 2011.

11 SEC. 41. Section 23001 of the Financial Code is amended to
12 read:

13 23001. As used in this division, the following terms have the
14 following meanings:

15 (a) "Deferred deposit transaction" means a transaction whereby
16 a person defers depositing a customer's personal check until a
17 specific date, pursuant to a written agreement for a fee or other
18 charge, as provided in Section 23035.

19 (b) "Commissioner" means the Commissioner of Corporations,
20 except as specified in Section 23002.

21 (c) "Department" means the Department of Corporations, except
22 as specified in Section 23002.

23 (d) "Licensee" means any person who offers, originates, or
24 makes a deferred deposit transaction, who arranges a deferred
25 deposit transaction for a deferred deposit originator, who acts as
26 an agent for a deferred deposit originator, or who assists a deferred
27 deposit originator in the origination of a deferred deposit
28 transaction. However, "licensee" does not include a state or
29 federally chartered bank, thrift, savings association, industrial loan
30 company, or credit union. "Licensee" also does not include a retail
31 seller engaged primarily in the business of selling consumer goods,
32 including consumables, to retail buyers that cashes checks or issues
33 money orders for a minimum fee not exceeding two dollars (\$2)
34 as a service to its customers that is incidental to its main purpose
35 or business. "Licensee" also does not include an employee regularly
36 employed by a licensee at the licensee's place of business. An
37 employee, when acting under the scope of the employee's
38 employment, shall be exempt from any other law from which the
39 employee's employer is exempt.

(e) “Person” means an individual, a corporation, a partnership, a limited liability company, a joint venture, an association, a joint stock company, a trust, an unincorporated organization, a government entity, or a political subdivision of a government entity.

(f) “Deferred deposit originator” means a person who offers, originates, or makes a deferred deposit transaction.

SEC. 42. Section 23002 is added to the Financial Code, to read:

23002. (a) As used in this division, the following terms have the following meanings:

(1) “Department of Corporations” or “department” means the Department of Financial Services, Division of Corporations.

(2) “Commissioner of Corporations” or “commissioner” means the Director of the Division of Corporations.

(b) This section shall become operative on July 1, 2011.

SEC. 43. Section 30002 of the Financial Code is amended to read:

30002. “Commissioner” means the Commissioner of Corporations.

This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 44. Section 30002 is added to the Financial Code, to read:

30002. (a) As used in this division, the following terms have the following meanings:

(1) “Department of Corporations” or “department” means the Department of Financial Services, Division of Corporations.

(2) “Commissioner of Corporations” or “commissioner” means the Director of the Division of Corporations.

(b) This section shall become operative on July 1, 2011.

SEC. 45. Section 31055 of the Financial Code is amended to read:

31055. “Commissioner” means the Commissioner of Financial Institutions, or any person to whom the Commissioner of Financial Institutions delegates the authority to act for him or her in the particular matter.

This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that

1 becomes operative on or before January 1, 2012, deletes or extends
2 the dates on which it becomes inoperative and is repealed.

3 SEC. 46. Section 31055 is added to the Financial Code, to read:

4 31055. (a) As used in this division, the following terms have
5 the following meanings:

6 (1) "Department of Financial Institutions" or "department"
7 means the Department of Financial Services, Division of Financial
8 Institutions.

9 (2) "Commissioner of Financial Institutions" or "commissioner"
10 means the Director of the Division of Financial Institutions, or any
11 person to whom the director delegates the authority to act for him
12 or her in a particular matter.

13 (b) This section shall become operative on July 1, 2011.

14 SEC. 47. Section 33045.5 of the Financial Code is amended
15 to read:

16 33045.5. "Commissioner" means the Commissioner of
17 Financial Institutions, or any person to whom the Commissioner
18 of Financial Institutions delegates the authority to act for the
19 Commissioner of Financial Institutions in this matter.

20 This section shall become inoperative on July 1, 2011, and, as
21 of January 1, 2012, is repealed, unless a later enacted statute, that
22 becomes operative on or before January 1, 2012, deletes or extends
23 the dates on which it becomes inoperative and is repealed.

24 SEC. 48. Section 33045.5 is added to the Financial Code, to
25 read:

26 33045.5. (a) As used in this division, the following terms have
27 the following meanings:

28 (1) "Department of Financial Institutions" or "department"
29 means the Department of Financial Services, Division of Financial
30 Institutions.

31 (2) "Commissioner of Financial Institutions" or "commissioner"
32 means the Director of the Division of Financial Institutions, or any
33 person to whom the director delegates the authority to act for him
34 or her in a particular matter.

35 (b) This section shall become operative on July 1, 2011.

36 SEC. 49. Section 50003.5 is added to the Financial Code, to
37 read:

38 50003.5. (a) Notwithstanding Section 50003, as used in this
39 division, the following terms have the following meanings:

1 (1) “Department of Corporations” or “department” means the
2 Department of Financial Services, Division of Corporations.

3 (2) “Commissioner of Corporations” or “commissioner” means
4 the Director of the Division of Corporations.

5 (b) This section shall become operative on July 1, 2011.

6 *SEC. 50. Division 20.5 (commencing with Section 55000) is*
7 *added to the Financial Code, to read:*

8
9 *DIVISION 20.5. REAL ESTATE FINANCIAL SERVICES*

10
11 *CHAPTER 1. GENERAL PROVISIONS*

12
13 *55000. This division shall be known and may be cited as the*
14 *Real Estate Financial Services Law.*

15 *55001. For the purposes of this division, the following*
16 *definitions shall apply:*

17 (a) “Division of Corporations” means the Division of
18 Corporations within the Department of Financial Services.

19 (b) “Commissioner” means the Commissioner of Financial
20 Services.

21 (c) “Fund” means the Real Estate Financial Services Fund
22 established in Section 55005.

23 (d) “Real estate financial services” means the services
24 performed by those persons described in subdivision (b) of Section
25 25.

26 (e) “Recovery account” means the Real Estate Financial
27 Services Recovery Account established in Section 55010.

28
29 *CHAPTER 2. REAL ESTATE FINANCIAL SERVICES FUND*

30
31 *55005. There is hereby created in the State Treasury the Real*
32 *Estate Financial Services Fund. Notwithstanding Section 13340*
33 *of the Government Code, moneys in the fund are continuously*
34 *appropriated to the Division of Corporations and shall be used*
35 *for carrying out the purposes of this division.*

CHAPTER 3. REAL ESTATE FINANCIAL SERVICES RECOVERY
ACCOUNT

55010. There shall be a separate account that shall be known as the Real Estate Financial Services Recovery Account in the Real Estate Financial Services Fund for purposes of recovery related to real estate financial services licensed by the Division of Corporations. The commissioner may, by regulation, require that up to 12 percent of the amount of any license fee collected from a real estate financial services licensee shall be credited to the recovery account. If, as of June 30 of any fiscal year, the balance of funds in the recovery account is at least three million five hundred thousand dollars (\$3,500,000), all funds in excess of this amount that have been credited to the recovery account shall instead be credited to the fund. As long as the balance of funds in the recovery account exceeds three million five hundred thousand dollars (\$3,500,000), all license fees collected from real estate financial services licensees shall be credited to the fund. Moneys in the recovery account are continuously appropriated to the Division of Corporations and shall be used for carrying out the provisions of this chapter.

55011. If, on June 30 of any year, the balance remaining in the recovery account is less than two hundred thousand dollars (\$200,000), every person engaging in real estate financial services, at the time of initial licensure and license renewal, shall pay, in addition to the license fee, a fee of seven dollars (\$7). This fee shall be paid into the State Treasury and credited to the recovery account.

55012. (a) In addition to the amount paid into the recovery account as set forth in Sections 55010 and 55011, the commissioner may authorize the transfer from the fund to the recovery account any amounts as are deemed necessary.

(b) If the balance remaining in the recovery account is more than four hundred thousand dollars (\$400,000), the commissioner may authorize the transfer of all or part of the surplus amount into the fund.

(c) *The commissioner may authorize the return to the recovery account of all or any amount previously transferred to the fund under this section.*

1 55013. (a) When an aggrieved person obtains (1) a final
2 judgment in a court of competent jurisdiction, including, but not
3 limited to, a criminal restitution order issued pursuant to
4 subdivision (f) of Section 1202.4 of the Penal Code or Section 3663
5 of Title 18 of the United States Code, or (2) an arbitration award
6 that includes findings of fact and conclusions of law rendered in
7 accordance with the rules established by the American Arbitration
8 Association or another recognized arbitration body, and in
9 accordance with Sections 1281 to 1294.2, inclusive, of the Code
10 of Civil Procedure where applicable, and where the arbitration
11 award has been confirmed and reduced to judgment pursuant to
12 Section 1287.4 of the Code of Civil Procedure, against a defendant
13 based upon the defendant's fraud, misrepresentation, or deceit,
14 made with intent to defraud, or conversion of trust funds, arising
15 directly out of any transaction in which the defendant, while
16 licensed by the Division of Corporations, performed real estate
17 financial services for which a license was required, the aggrieved
18 person may, upon the judgment becoming final, file an application
19 with the Division of Corporations for payment from the recovery
20 account, within the limitations specified in Section 55024, of the
21 amount unpaid on the judgment that represents an actual and
22 direct loss to the claimant in the transaction. As used in this
23 chapter, "court of competent jurisdiction" includes the federal
24 courts, but does not include the courts of another state.

25 (b) The application shall be delivered in person or by certified
26 mail to an office of the Division of Corporations no later than one
27 year after the judgment has become final.

28 (c) The application shall be made on a form prescribed by the
29 Division of Corporations, verified by the claimant, and shall
30 include all of the following:

31 (1) The name and address of the claimant.

32 (2) If the claimant is represented by an attorney, the name,
33 business address, and telephone number of the attorney.

34 (3) The identification of the judgment, the amount of the claim,
35 and an explanation of its computation.

36 (4) A detailed narrative statement of the facts in explanation of
37 the allegations of the complaint upon which the underlying
38 judgment is based.

39 (5) (A) Except as provided in subparagraph (B), a statement by
40 the claimant, signed under penalty of perjury, that the complaint

1 upon which the underlying judgment is based was prosecuted
2 conscientiously and in good faith. As used in this section,
3 “conscientiously and in good faith” means that no party potentially
4 liable to the claimant in the underlying transaction was
5 intentionally and without good cause omitted from the complaint,
6 that no party named in the complaint who otherwise reasonably
7 appeared capable of responding in damages was dismissed from
8 the complaint intentionally and without good cause, and that the
9 claimant employed no other procedural means contrary to the
10 diligent prosecution of the complaint in order to seek to qualify
11 for the recovery account.

12 (B) For the purpose of an application based on a criminal
13 restitution order, all of the following statements by the claimant:

14 (i) The claimant has not intentionally and without good cause
15 failed to pursue any person potentially liable to the claimant in
16 the underlying transaction other than a defendant who is the
17 subject of a criminal restitution order.

18 (ii) The claimant has not intentionally and without good cause
19 failed to pursue in a civil action for damages all persons potentially
20 liable to the claimant in the underlying transaction who otherwise
21 reasonably appeared capable of responding in damages other than
22 a defendant who is the subject of a criminal restitution order.

23 (iii) The claimant employed no other procedural means contrary
24 to the diligent prosecution of the complaint in order to seek to
25 qualify for recovery from the recovery account.

26 (6) The name and address of the judgment debtor or, if not
27 known, the names and addresses of persons who may know the
28 judgment debtor’s present whereabouts.

29 (7) The following representations and information from the
30 claimant:

31 (A) That he or she is not a spouse of the judgment debtor nor a
32 personal representative of the spouse.

33 (B) That he or she has complied with all of the requirements of
34 this chapter.

35 (C) That the judgment underlying the claim meets the
36 requirements of subdivision (a).

37 (D) A description of searches and inquiries conducted by or on
38 behalf of the claimant with respect to the judgment debtor’s assets
39 liable to be sold or applied to satisfaction of the judgment, an
40 itemized valuation of the assets discovered, and the results of

1 actions by the claimant to have the assets applied to satisfaction
2 of the judgment.

3 (E) That he or she has diligently pursued collection efforts
4 against all judgment debtors and all other persons liable to the
5 claimant in the transaction that is the basis for the underlying
6 judgment.

7 (F) That the underlying judgment and debt have not been
8 discharged in bankruptcy, or, in the case of a bankruptcy
9 proceeding that is open at or after the time of the filing of the
10 application, that the judgment and debt have been declared to be
11 nondischargeable.

12 (G) That the application was mailed or delivered to the Division
13 of Corporations no later than one year after the underlying
14 judgment became final.

15 (d) The application form shall include detailed instructions with
16 respect to documentary evidence, pleadings, court rulings, the
17 products of discovery in the underlying litigation, and a notice to
18 the applicant of his or her obligation to protect the underlying
19 judgment from discharge in bankruptcy, to be appended to the
20 application.

21 (e) An application for payment from the recovery account that
22 is based on a criminal restitution order shall comply with all of
23 the requirements of this chapter. For the purpose of an application
24 based on a criminal restitution order, the following terms shall
25 have all of the following meanings:

26 (1) “Judgment” means the criminal restitution order.

27 (2) “Complaint” means the facts of the underlying transaction
28 upon which the criminal restitution order is based.

29 (3) “Judgment debtor” means any defendant who is the subject
30 of the criminal restitution order.

31 55014. (a) The claimant shall serve a copy of the notice
32 prescribed in subdivision (e) together with a copy of the application
33 upon the judgment debtor by personal service, by certified mail,
34 or by publication, as set forth in subdivision (b).

35 (b) If the judgment debtor holds an unexpired and unrevoked
36 license issued by the Division of Corporations, service of the notice
37 and a copy of the application may be made by certified mail
38 addressed to the judgment debtor at the latest business or residence
39 address on file with the Division of Corporations. If the judgment
40 debtor does not hold an unexpired and unrevoked license issued

1 by the Division of Corporations and personal service cannot be
2 effected through the exercise of reasonable diligence, the claimant
3 shall serve the judgment debtor by one publication of the notice
4 in each of two successive weeks in a newspaper of general
5 circulation published in the county in which the judgment debtor
6 was last known to reside.

7 (c) If the application is served upon the judgment debtor by
8 certified mail, service is complete five days after mailing if the
9 place of address is within the State of California, 10 days after
10 mailing if the place of address is outside the State of California
11 but within the United States, and 20 days after mailing if the place
12 of address is outside the United States. Personal service is complete
13 on the date of service. Service by publication is complete upon
14 completion of the second week of publication.

15 (d) If a judgment debtor wishes to contest payment of an
16 application by the commissioner, he or she shall mail or deliver
17 a written response to the application addressed to the Division of
18 Corporations at its headquarters office within 30 days after service
19 of the notice and application, and shall mail or deliver a copy of
20 the response to the claimant. If a judgment debtor fails to mail or
21 deliver a timely response, he or she shall have waived his or her
22 right to present objections to payment.

23 (e) The notice served upon the judgment debtor shall include
24 the following statement:

25
26 “NOTICE: Based upon a judgment entered against you in favor
27 of _____, application for payment from the Real Estate
28 (name of claimant)

29 Financial Services Recovery Account of the Real Estate Financial
30 Services Fund is being made to the Division of Corporations.

31 “If payment is made from the Real Estate Financial Services
32 Recovery Account, all licenses and license rights that you have
33 under the applicable licensing laws and regulations will be
34 automatically suspended on the date of payment and cannot be
35 reinstated until the Real Estate Financial Services Recovery
36 Account has been reimbursed for the amount paid plus interest at
37 the prevailing rate.

38 “If you wish to contest payment by the Commissioner of
39 Financial Services, you must file a written response to the

1 application addressed to the Division of Corporations, at
2 _____ within 30 days after mailing, delivery, or publication
3 of this notice and mail or deliver a copy of that response to the
4 claimant. If you fail to do so, you will have waived your right to
5 present your objections to payment.”
6

7 (f) If a judgment debtor fails to mail or deliver a written
8 response to the application with the Division of Corporations
9 within 30 days after personal service, mailing, or final publication
10 of the notice, the judgment debtor shall not then be entitled to
11 notice of any action taken or proposed to be taken by the
12 commissioner with respect to the application.

13 55015. (a) If the commissioner determines that the application
14 as submitted by the claimant fails to comply substantially with the
15 requirements of Section 55013 or with the requirements of a
16 regulation adopted by the commissioner, the commissioner shall,
17 within 15 days after receipt of the application, mail an itemized
18 list of deficiencies to the claimant.

19 (b) The time within which the commissioner is required to act
20 under Section 55016 shall be measured from the date of receipt
21 by the Division of Corporations of an application that is
22 substantially complete. In the event of an irreconcilable dispute
23 between the claimant and the commissioner on the question of
24 whether the application is substantially complete, the claimant
25 may immediately file the claim with the court pursuant to Section
26 55020.

27 55016. (a) The commissioner shall render a final written
28 decision on the application within 90 days after a completed
29 application has been received unless the claimant agrees in writing
30 to extend the time within which the commissioner may render a
31 decision. If the commissioner fails to render a written decision in
32 response to the claim within 90 days after its receipt or within the
33 extended period agreed to by the claimant, the claim shall be
34 deemed to have been denied by the commissioner on the final day
35 for rendering the decision.

36 (b) The commissioner may deny or grant the application or may
37 enter into a compromise with the claimant to pay less in settlement
38 than the full amount of the claim. If the claimant refuses to accept
39 a settlement of the claim offered by the commissioner, the written

1 *decision of the commissioner shall be to deny the claim or it shall*
2 *be deemed denied if a written decision is not rendered within the*
3 *time specified in subdivision (a). Evidence of settlement offers and*
4 *discussions between the commissioner or the Division of*
5 *Corporations and the claimant shall not be competent evidence*
6 *in judicial proceedings undertaken by the claimant pursuant to*
7 *Section 55020.*

8 *55017. In its consideration and investigation of an application,*
9 *the Division of Corporations shall have recourse to all appropriate*
10 *means of investigation and discovery available to it under Article*
11 *2 (commencing with Section 11180) of Chapter 2 of Part 1 of*
12 *Division 3 of Title 2 of the Government Code.*

13 *55018. (a) The commissioner shall give notice of a decision*
14 *rendered with respect to the application to the claimant and to a*
15 *judgment debtor who has filed a timely response to the application*
16 *in accordance with Section 55014.*

17 *(b) If the application is denied, the notice to the claimant and*
18 *judgment debtor shall include all of the following:*

19
20 *“NOTICE: Claimant’s application has been denied. If the*
21 *claimant wishes to pursue the application in court, the claimant*
22 *must file the application as follows in a superior court of this state*
23 *not later than six months after receipt of this notice, pursuant to*
24 *Section 55020. If the underlying judgment is a California state*
25 *court judgment, the application shall be filed in the court in which*
26 *the underlying judgment was entered. If the underlying judgment*
27 *is a federal court judgment, the application shall be filed in the*
28 *superior court of any county within California that would have*
29 *been a proper venue if the underlying lawsuit had been filed in a*
30 *California state court, or in the Superior Court of the County of*
31 *Sacramento.”*

32
33 *(c) If the decision of the commissioner is to make a payment to*
34 *the claimant out of the recovery account, the following notice shall*
35 *be given to the judgment debtor along with a copy of the decision*
36 *of the commissioner:*

37
38 *“NOTICE: The decision of the Commissioner of Financial*
39 *Services on the application of _____ is to pay \$_____ from the Real*

1 *Estate Financial Services Recovery Account. A copy of that*
2 *decision is enclosed.*

3 *“Pursuant to Section 55026, all of your licenses and license*
4 *rights under applicable laws and regulations will be suspended*
5 *effective on the date of the payment, and you will not be eligible*
6 *for reinstatement of any of those licenses or license rights until*
7 *you have reimbursed the Real Estate Financial Services Recovery*
8 *Account for this payment plus interest at the prevailing legal rate.*

9 *“If you desire a judicial review of the suspension of your licenses*
10 *and license rights, you may petition the superior court for a writ*
11 *of mandamus. If the underlying judgment is a California state*
12 *court judgment, the petition shall be filed in the court in which the*
13 *judgment was entered. If the underlying judgment is a federal court*
14 *judgment, the petition shall be filed in the superior court of any*
15 *county within California that would have been a proper venue if*
16 *the underlying lawsuit had been filed in a California state court,*
17 *or in the Superior Court of the County of Sacramento. To be timely,*
18 *the petition must be filed with the court within 30 days of receipt*
19 *of this notice.”*

20
21 *55019. If, at any time prior to the rendering of a decision on*
22 *an application, the commissioner makes a preliminary*
23 *determination that the aggregate valid applications of all aggrieved*
24 *persons against that licensee are likely to exceed the limits of*
25 *liability in Section 55024, the commissioner shall, in lieu of further*
26 *administrative proceedings, initiate a proration proceeding*
27 *pursuant to Section 55025 in a superior court of any county in this*
28 *state that would be a proper court for the filing of a denied*
29 *application or writ of mandamus pursuant to Section 55018.*

30 *55020. (a) A claimant against whom the commissioner has*
31 *rendered a decision denying an application pursuant to Section*
32 *55013 may, within six months after the mailing of the notice of the*
33 *denial, file a verified application in superior court for an Order*
34 *Directing Payment Out of the Real Estate Financial Services*
35 *Recovery Account based upon the grounds set forth in the*
36 *application to the commissioner. If the underlying judgment is a*
37 *California state court judgment, the application shall be filed in*
38 *the court in which the underlying judgment was entered. If the*
39 *underlying judgment is a federal court judgment, the application*
40 *shall be filed in the superior court of any county within California*

1 *that would have been a proper venue if the underlying lawsuit had*
2 *been filed in a California state court, or in the Superior Court of*
3 *the County of Sacramento.*

4 *(b) A copy of the verified application shall be served upon the*
5 *commissioner and upon the judgment debtor. A certificate or*
6 *affidavit of service shall be filed by the claimant with the court.*
7 *Service on the commissioner may be made by certified mail*
8 *addressed to the headquarters office of the Division of*
9 *Corporations. Service upon a judgment debtor may be made in*
10 *accordance with Section 55014. The notice served upon the*
11 *judgment debtor shall read as follows:*

12
13 *“NOTICE: An application has been filed with the court for a*
14 *payment from the Real Estate Financial Services Recovery Account*
15 *that was previously denied by the Commissioner of Financial*
16 *Services.”*

17 *“If the Division of Corporations makes a payment from the Real*
18 *Estate Financial Services Recovery Account pursuant to court*
19 *order, all of your licenses and license rights under applicable laws*
20 *and regulations will be automatically suspended until the Real*
21 *Estate Financial Services Recovery Account has been reimbursed*
22 *for the amount paid plus interest at the prevailing rate.”*

23 *“If you wish to defend in court against this application, you must*
24 *file a written response with the court within 30 days after having*
25 *been served with a copy of the application. If you do not file a*
26 *written response, you will have waived your right to defend against*
27 *the application.”*

28
29 *55021. (a) The commissioner and the judgment debtor shall*
30 *each have 30 days after being served with the application to file*
31 *a written response. The court shall then set the matter for hearing*
32 *upon the petition of the claimant. The court shall grant a request*
33 *of the commissioner for a continuance of as much as 30 days and*
34 *may, upon a showing of good cause by any party, continue the*
35 *hearing as the court deems appropriate.*

36 *(b) The claimant shall have the burden of proving compliance*
37 *with the requirements of Section 55013 by competent evidence at*
38 *an evidentiary hearing. The claimant shall be entitled to a de novo*
39 *review of the merits of the application as contained in the*
40 *administrative record.*

1 (c) *If the judgment debtor fails to file a written response to the*
2 *application, the application may be compromised or settled by the*
3 *commissioner at any time during the court proceedings and the*
4 *court shall, upon joint petition of the claimant and the*
5 *commissioner, issue an order directing payment out of the recovery*
6 *account.*

7 55022. *Whenever the court proceeds upon an application under*
8 *Section 55020, it shall order payment out of the recovery account*
9 *only upon a determination that the aggrieved party has a valid*
10 *cause of action within the purview of Section 55013, and has*
11 *complied with Section 55020.*

12 *The commissioner may defend any of these actions on behalf of*
13 *the recovery account and shall have recourse to all appropriate*
14 *means of defense and review, including examination of witnesses*
15 *and the right to relitigate any issues material and relevant in the*
16 *proceeding against the recovery account which were determined*
17 *in the underlying action on which the judgment in favor of the*
18 *applicant was based. If the judgment in favor of the applicant was*
19 *by default, stipulation, consent, or pursuant to Section 594 of the*
20 *Code of Civil Procedure, or whenever the action against the*
21 *licensee was defended by a trustee in bankruptcy, the applicant*
22 *shall have the burden of proving that the cause of action against*
23 *the licensee was for fraud, misrepresentation, deceit, or conversion*
24 *of trust funds. Otherwise, the judgment shall create a rebuttable*
25 *presumption of the fraud, misrepresentation, deceit, or conversion*
26 *of trust funds by the licensee, which presumption shall affect the*
27 *burden of producing evidence.*

28 *The commissioner may move the court at any time to dismiss*
29 *the application when it appears there are no triable issues and the*
30 *petition is without merit. The motion may be supported by affidavit*
31 *of any person or persons having knowledge of the facts, and may*
32 *be made on the basis that the petition, and the judgment referred*
33 *to in the petition, does not form the basis for a meritorious recovery*
34 *claim within the purview of Section 55013; provided, however,*
35 *the commissioner shall give written notice at least 10 days before*
36 *the motion.*

37 *The commissioner may, subject to court approval, compromise*
38 *a claim based upon the application of an aggrieved party. The*
39 *commissioner shall not be bound by any compromise or stipulation*
40 *of the judgment debtor.*

1 55023. *The judgment debtor may defend an action against the*
2 *recovery account on his or her own behalf and shall have recourse*
3 *to all appropriate means of defense and review, including*
4 *examination of witnesses. All matters, including, but not limited*
5 *to, the issues of fraud, misrepresentation, deceit, or conversion of*
6 *trust funds, finally adjudicated in the underlying action are*
7 *conclusive as to the judgment debtor and the applicant in the*
8 *proceeding against the recovery account.*

9 55024. *Notwithstanding any other provision of this chapter*
10 *and regardless of the number of persons aggrieved or parcels of*
11 *real estate involved in a transaction or the number of judgments*
12 *against a licensee, the liability of the recovery account shall not*
13 *exceed the following amounts:*

14 (a) *Fifty thousand dollars (\$50,000) for any one transaction*
15 *and two hundred fifty thousand dollars (\$250,000) for any one*
16 *licensee.*

17 (b) *When multiple licensed persons performing real estate*
18 *financial services are involved in a transaction and the individual*
19 *conduct of two or more of the licensees results in a judgment*
20 *meeting the requirements of subdivision (a) of Section 55013, the*
21 *claimant may seek recovery from the recovery account based on*
22 *the judgment against any of the licensed persons, subject to the*
23 *limitations of this section and subparagraph (E) of paragraph (7)*
24 *of subdivision (c) of Section 55013.*

25 55025. *If the amount of liability of the recovery account as*
26 *provided for in Section 55024 is insufficient to pay in full the valid*
27 *claims of all aggrieved persons by whom claims have been filed*
28 *against any one licensee, the amount shall be distributed among*
29 *them in the ratio that their respective claims bear to the aggregate*
30 *of the valid claims, or in any other manner as the court deems*
31 *equitable. Distribution of any moneys shall be among the persons*
32 *entitled to a share, without regard to the order of priority in which*
33 *their respective judgments may have been obtained or their claims*
34 *have been filed. Upon petition of the commissioner, the court may*
35 *require all claimants and prospective claimants against one*
36 *licensee to be joined in one action, to the end that the respective*
37 *rights of all claimants to the recovery account may be equitably*
38 *adjudicated and settled.*

39 55026. *If the commissioner pays from the recovery account*
40 *any amount in settlement of a claim or toward satisfaction of a*

1 judgment against a licensed person performing real estate financial
2 services, the license shall be automatically suspended upon the
3 date of payment from the recovery account. No person engaging
4 in real estate financial services shall be granted reinstatement
5 until he or she has repaid in full, plus interest at the prevailing
6 legal rate applicable to a judgment rendered in any court of this
7 state, the amount paid from the recovery account on his or her
8 account. A discharge in bankruptcy shall not relieve a person from
9 the penalties and disabilities provided in this chapter.

10 55027. If, at any time, the money deposited in the recovery
11 account is insufficient to satisfy any duly authorized claim or
12 portion thereof, the commissioner shall, when sufficient money
13 has been deposited in the recovery account, satisfy the unpaid
14 claims or portions thereof, in the order that the claims or portions
15 thereof were originally filed, plus accumulated interest at the rate
16 of 4 percent a year.

17 55028. Any sums received by the commissioner pursuant to
18 any provisions of this chapter shall be deposited in the State
19 Treasury and credited to the recovery account.

20 55029. It shall be unlawful for any person or the agent of any
21 person to file with the commissioner any notice, statement, or other
22 document required under the provisions of this chapter which is
23 false or untrue or contains any willful, material misstatement of
24 fact. This type of conduct shall constitute a public offense
25 punishable by imprisonment in the county jail for a period of not
26 more than one year or a fine of not more than one thousand dollars
27 (\$1,000), or both.

28 55030. When the commissioner has paid from the recovery
29 account any sum to the judgment creditor, the commissioner shall
30 be subrogated to all of the rights of the judgment creditor and the
31 judgment creditor shall assign all of his or her right, title, and
32 interest in the judgment to the commissioner of and any amount
33 and interest so recovered by the commissioner on the judgment
34 shall be deposited to the recovery account.

35 55031. The failure of an aggrieved person to comply with all
36 of the provisions of this chapter shall constitute a waiver of any
37 rights under this chapter.

38 55032. Nothing in this chapter shall limit the authority of the
39 commissioner to take disciplinary action against any licensee for
40 a violation of applicable licensing laws, or of the rules and

1 *regulations of the commissioner; nor shall the repayment in full*
2 *of all obligations to the recovery account by any licensee nullify*
3 *or modify the effect of any other disciplinary proceeding brought*
4 *pursuant to applicable law or regulation.*

5
6 *CHAPTER 4. MISCELLANEOUS*
7

8 *55040. This division shall become operative on July 1, 2012.*

9 *SEC. 51. Section 11552 of the Government Code is amended*
10 *to read:*

11 11552. (a) Effective January 1, 1988, an annual salary of
12 eighty-five thousand four hundred two dollars (\$85,402) shall be
13 paid to each of the following:

- 14 (1) Commissioner of Financial ~~Institutions~~ *Services*.
15 ~~(2) Commissioner of Corporations.~~
16 ~~(3)~~
17 (2) Director of Transportation.
18 ~~(4)~~
19 (3) Real Estate Commissioner.
20 ~~(5)~~
21 (4) Director of Social Services.
22 ~~(6)~~
23 (5) Director of Water Resources.
24 ~~(7)~~
25 (6) Chief Deputy Secretary for Adult Operations of the
26 Department of Corrections and Rehabilitation.
27 ~~(8)~~
28 (7) Director of General Services.
29 ~~(9)~~
30 (8) Director of Motor Vehicles.
31 ~~(10)~~
32 (9) Chief Deputy Secretary for Juvenile Justice in the
33 Department of Corrections and Rehabilitation.
34 ~~(11)~~
35 (10) Executive Officer of the Franchise Tax Board.
36 ~~(12)~~
37 (11) Director of Employment Development.
38 ~~(13)~~
39 (12) Director of Alcoholic Beverage Control.
40 ~~(14)~~

1 (13) Director of Housing and Community Development.
2 ~~(15)~~
3 (14) Director of Alcohol and Drug Programs.
4 ~~(16)~~
5 (15) Director of Statewide Health Planning and Development.
6 ~~(17)~~
7 (16) Director of the Department of Personnel Administration.
8 ~~(18)~~
9 (17) Director of Health Care Services.
10 ~~(19)~~
11 (18) Director of Mental Health.
12 ~~(20)~~
13 (19) Director of Developmental Services.
14 ~~(21)~~
15 (20) State Public Defender.
16 ~~(22)~~
17 (21) Director of the California State Lottery.
18 ~~(23)~~
19 (22) Director of Fish and Game.
20 ~~(24)~~
21 (23) Director of Parks and Recreation.
22 ~~(25)~~
23 (24) Director of Rehabilitation.
24 ~~(26)~~
25 (25) Director of the Office of Administrative Law.
26 ~~(27)~~
27 (26) Director of Consumer Affairs.
28 ~~(28)~~
29 (27) Director of Forestry and Fire Protection.
30 ~~(29)~~
31 (28) The Inspector General pursuant to Section 6125 of the
32 Penal Code.
33 ~~(30)~~
34 (29) Director of Child Support Services.
35 ~~(31)~~
36 (30) Director of Industrial Relations.
37 ~~(32)~~
38 (31) Chief Deputy Secretary for Adult Programs in the
39 Department of Corrections and Rehabilitation.
40 ~~(33)~~

1 (32) Director of Toxic Substances Control.

2 ~~(34)~~

3 (33) Director of Pesticide Regulation.

4 ~~(35)~~

5 (34) Director of Managed Health Care.

6 ~~(36)~~

7 (35) Director of Environmental Health Hazard Assessment.

8 ~~(37)~~

9 (36) Director of Technology.

10 ~~(38)~~

11 (37) Director of California Bay-Delta Authority.

12 ~~(39)~~

13 (38) Director of California Conservation Corps.

14 (b) The annual compensation provided by this section shall be
15 increased in any fiscal year in which a general salary increase is
16 provided for state employees. The amount of the increase provided
17 by this section shall be comparable to, but shall not exceed, the
18 percentage of the general salary increases provided for state
19 employees during that fiscal year.

20 ~~SEC. 50.~~

21 *SEC. 52.* Section 13975 of the Government Code is amended
22 to read:

23 13975. (a) The Business and Transportation Agency in state
24 government is hereby renamed the Business, Transportation and
25 Housing Agency. The agency consists of the State Department of
26 Alcoholic Beverage Control, the Department of the California
27 Highway Patrol, the Department of Corporations, the Department
28 of Housing and Community Development, the Department of
29 Motor Vehicles, the Department of Real Estate, the Department
30 of Transportation, the Department of Financial Institutions, the
31 Department of Managed Health Care, and the Board of Pilot
32 Commissioners for the Bays of San Francisco, San Pablo, and
33 Suisun. The California Housing Finance Agency is also located
34 within the Business, Transportation and Housing Agency, as
35 specified in Division 31 (commencing with Section 50000) of the
36 Health and Safety Code.

37 (b) This section shall become inoperative on July 1, 2011, and,
38 as of January 1, 2012, is repealed, unless a later enacted statute,
39 that becomes operative on or before January 1, 2012, deletes or
40 extends the dates on which it becomes inoperative and is repealed.

1 ~~SEC. 51.~~

2 *SEC. 53.* Section 13975 is added to the Government Code, to
3 read:

4 13975. (a) The Business and Transportation Agency in state
5 government is hereby renamed the Business, Transportation and
6 Housing Agency. The agency consists of the State Department of
7 Alcoholic Beverage Control, the Department of the California
8 Highway Patrol, the Department of Financial Services, the
9 Department of Housing and Community Development, the
10 Department of Motor Vehicles, the Department of Real Estate, the
11 Department of Transportation, the Department of Managed Health
12 Care, and the Board of Pilot Commissioners for the Bays of San
13 Francisco, San Pablo, and Suisun. The California Housing Finance
14 Agency is also located within the Business, Transportation and
15 Housing Agency, as specified in Division 31 (commencing with
16 Section 50000) of the Health and Safety Code.

17 (b) This section shall become operative on July 1, 2011.

18 ~~SEC. 52.~~

19 *SEC. 54.* Section 13978.6 of the Government Code is amended
20 to read:

21 13978.6. (a) The Secretary of the Business, Transportation
22 and Housing Agency shall be generally responsible for the sound
23 fiscal management of each department, office, or other unit within
24 the agency. The secretary shall review and approve the proposed
25 budget of each department, office, or other unit. The secretary
26 shall hold the head of each department, office, or other unit
27 responsible for management control over the administrative, fiscal,
28 and program performance of his or her department, office, or other
29 unit. The secretary shall review the operations and evaluate the
30 performance at appropriate intervals of each department, office,
31 or other unit, and shall seek continually to improve the organization
32 structure, the operating policies, and the management information
33 systems of each department, office, or other unit.

34 (b) There is in the Business, Transportation, and Housing
35 Agency a Department of Corporations, which has the responsibility
36 for administering various laws. In order to effectively support the
37 Department of Corporations in the administration of these laws,
38 there is hereby established the State Corporations Fund. All
39 expenses and salaries of the Department of Corporations shall be
40 paid out of the State Corporations Fund. Therefore, notwithstanding

1 any provision of any law administered by the Department of
2 Corporations declaring that fees, reimbursements, assessments, or
3 other money or amounts charged and collected by the Department
4 of Corporations under these laws are to be delivered or transmitted
5 to the Treasurer and deposited to the credit of the General Fund,
6 on and after July 1, 1992, all fees, reimbursements, assessments,
7 and other money or amounts charged and collected under these
8 laws and attributable to the 1992–93 fiscal year and subsequent
9 fiscal years shall be delivered or transmitted to the Treasurer and
10 deposited to the credit of the State Corporations Fund.

11 (c) Funds appropriated from the State Corporations Fund and
12 made available for expenditure for any law or program of the
13 Department of Corporations may come from the following:

14 (1) Fees and any other amounts charged and collected pursuant
15 to Section 25608 of the Corporations Code, except for fees and
16 other amounts charged and collected pursuant to subdivisions (o)
17 to (r), inclusive, of Section 25608 of the Corporations Code.

18 (2) Fees collected pursuant to subdivisions (a), (b), (c), and (d)
19 of Section 25608.1 of the Corporations Code.

20 (d) This section shall become inoperative on July 1, 2011, and,
21 as of January 1, 2012, is repealed, unless a later enacted statute,
22 that becomes operative on or before January 1, 2012, deletes or
23 extends the dates on which it becomes inoperative and is repealed.

24 ~~SEC. 53.~~

25 *SEC. 55.* Section 13978.6 is added to the Government Code,
26 to read:

27 13978.6. (a) The Secretary of the Business, Transportation
28 and Housing Agency shall be generally responsible for the sound
29 fiscal management of each department, office, or other unit within
30 the agency. The secretary shall review and approve the proposed
31 budget of each department, office, or other unit. The secretary
32 shall hold the head of each department, office, or other unit
33 responsible for management control over the administrative, fiscal,
34 and program performance of his or her department, office, or other
35 unit. The secretary shall review the operations and evaluate the
36 performance at appropriate intervals of each department, office,
37 or other unit, and shall seek continually to improve the organization
38 structure, the operating policies, and the management information
39 systems of each department, office, or other unit.

(b) There is in the Business, Transportation and Housing Agency a Department of Financial Services, which has the responsibility for administering various laws. In order to effectively support the Department of Financial Services in the administration of these laws, there is hereby continued in existence the State Corporations Fund. All expenses and salaries of the Department of Financial Services shall be paid out of the State Corporations Fund. Therefore, notwithstanding any provision of any law administered by the Department of Financial Services declaring that fees, reimbursements, assessments, or other money or amounts charged and collected by the Department of Financial Services under these laws are to be delivered or transmitted to the Treasurer and deposited to the credit of the General Fund, on and after July 1, 1992, all fees, reimbursements, assessments, and other money or amounts charged and collected under these laws and attributable to the 1992–93 fiscal year and subsequent fiscal years shall be delivered or transmitted to the Treasurer and deposited to the credit of the State Corporations Fund.

(c) Funds appropriated from the State Corporations Fund and made available for expenditure for any law or program of the Department of Financial Services may come from the following:

(1) Fees and any other amounts charged and collected pursuant to Section 25608 of the Corporations Code, except for fees and other amounts charged and collected pursuant to subdivisions (o) to (r), inclusive, of Section 25608 of the Corporations Code.

(2) Fees collected pursuant to subdivisions (a), (b), (c), and (d) of Section 25608.1 of the Corporations Code.

(d) This section shall become operative on July 1, 2011.

~~SEC. 54.~~

SEC. 56. The sum of one hundred fifty thousand dollars (\$150,000) is hereby appropriated from the General Fund portions of the Real Estate Fund to the Secretary of the Business, Transportation and Housing Agency to fund the reports described in Sections 48 and 49 of the Financial Code.

SEC. 57. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of

- 1 *the Government Code, or changes the definition of a crime within*
- 2 *the meaning of Section 6 of Article XIII B of the California*
- 3 *Constitution.*

O